



Alberta Darling

Wisconsin State Senator

Member, Joint Committee on Finance

Testimony for the Assembly Committee on Financial Institutions March 24, 2010

Thank you Chairman Fields and Members of the Committee on Financial Institutions for allowing me the opportunity to testify in favor of Senate Bill 286.

We talk a lot about jobs in this building. Unnecessary government regulation can chase jobs out of Wisconsin. And that is exactly what will happen if we don't pass SB 286.

SB 286 simply adds "health care billing companies" to the list of business entities specifically excluded from the definition of "collection agency." For example, the statutes already specifically exclude attorneys, banks and insurers from the definition of "collection agency."

A health care billing company is essentially an extension of your doctor's office. Health care billing companies take care of administrative duties so doctors can focus on patient care.

The Department of Financial Institutions is sending letters to health care billing companies telling them that DFI thinks they are collection agencies. However, health care billing companies are not collection agencies. Others also speaking in favor of this bill can go into greater detail on the distinction between the two.

If a health care billing company were to be regulated as a collections agency, a lot of cost and reporting burdens go along with that classification. But a Wisconsin-based billing company can avoid being regulated as a collection agency by simply moving out of state! Other states don't regulate health care billing companies as collection agencies.

We need to clear up this gray area in the statutes so health care billing companies don't leave Wisconsin for more favorable regulatory climates.

I am pleased to report SB 286 received a unanimous vote in its Senate committee and was approved by the full Senate on a strong bipartisan vote earlier this month. I appreciate the committee's time today and urge members to vote in favor of this commonsense bill.

Capitol Office:

P.O. Box 7882
Madison, Wisconsin 53707-7882
Phone: 608-266-5830
Fax: 608-267-0588

Toll-free: 1-800-863-1113

Email: sen.darling@legis.wisconsin.gov
Web page: www.legis.wisconsin.gov/senate/sen08/news/

District Office:

N88 W16621 Appleton Avenue, Suite 200
Menomonee Falls, Wisconsin 53051
Phone: 262-250-9440
Fax: 262-250-8510



Metropolitan
Milwaukee
Association of
Commerce

Council of Small Business Executives

www.mmac.org

DATE: MARCH 24, 2010

TO: ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

FROM: STEVE BAAS
GOVERNMENT AFFAIRS DIRECTOR

RE: SB 286

The Metropolitan Milwaukee Association of Commerce (MMAC) is pleased to urge your support for SB 286; a simple, commonsense change that helps keep jobs in Wisconsin.

In many ways, under the current application of our regulatory code, health care billing companies are victims of mistaken identity. While they are not nor do they wish to be collection agencies, they are treated as such by state regulators. The distinction between healthcare billing agencies and collection agencies is not lost on other states. In fact, the application of the same regulatory standards to these two very different types of businesses impacts only those businesses domiciled in Wisconsin. Health care billing agencies operating in Wisconsin but headquartered elsewhere do not have to comply with the regulations governing collection agencies.

As you might imagine, that situation places Wisconsin health care billing jobs in immediate and very real jeopardy. Any billing company not wishing to subject itself to collection agency regulations can avoid them very simply by moving their operations out of state. This is extremely easy to do since the work is almost all done by phone, mail or other electronic and non location-specific means.

SB 286 addresses this problem by adding healthcare billing companies to the list of businesses currently exempt from the rules governing collection agencies. Other currently exempt entities include attorneys, banks, express companies, insurers, and real estate brokers and salespersons.

In closing, I'd like to very simply lay out what is – and is not – at stake with your action on this legislation:

- If SB 286 does pass, *nothing* will change in terms of healthcare billing or interactions with consumers.
- If SB 286 does not pass, all that will change is that Wisconsin companies providing Wisconsin jobs in the healthcare billing business will move those jobs to another state.

We hear a lot of talk about the importance of creating and retaining jobs nowadays. AB 286 is a simple change that will keep jobs here in state without having any adverse effect on customer service within the healthcare industry. I thank you for granting this bill a hearing today and I urge your prompt positive consideration of this bill.

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State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

Jean Plale, Licensed Financial Services Director
Department of Financial Institutions

Assembly Committee on Financial Institutions
March 24th, 2010

Under current law, a collection agency means any person engaging in the business of collecting or receiving for payment for others of any account, bill, or other indebtedness. The list of persons exempt from the definition is short, and includes only persons who are regulated elsewhere, such as banks, real estate brokers, and attorneys. SB 286 will expand the list to exclude from the definition of a collection agency any person collecting or attempting to collect any debt owed or due another arising from an obligation that was not in default when the person obtained rights to collect the debt.

The Department is concerned that, if passed into law, this bill would have a significant negative impact on consumer protection. None of the important protections in place currently under s. 218.04, Wis. Stats., will pertain to those who collect accounts not in default when listed. For example, current law requires a collection agency to:

- Promptly deposit into a trust account the client's portion of all monies it collects.
- Remit amounts collected within a certain number of days.
- Maintain extensive records that identify payments received and remitted.
- Be financially responsible in order to obtain and maintain its license. This includes maintaining a surety bond.

These same protections are necessary regardless if an account is in default or current when listed. As a result, the Department opposes SB 286.

CORRESPONDENCE / MEMORANDUM

STATE OF WISCONSIN
Department of Financial Institutions

Date: January 21, 2009

To:

From: Maggie Schmelzer
(608) 261-2310

Subject: Billing Service vs. Collection Agency

As you know, Section 218.04(1)(a), Wis. Stats., defines a collection agency as any person engaging in the business of collecting or receiving for payment for others of any account, bill or other indebtedness. However, it is this Department's position that a billing service, if they meet all of the following conditions, would be exempt from licensing as a collection agency.

- The billing service does not have any control over debtors' funds. Debtor payments must be sent directly to the creditor or to a lockbox at a financial institution. The lockbox must be established in the name of the creditor. The billing service may not have any access to the lockbox or any control over the account at the financial institution, to which the debtors' payments are deposited.
- Any and all written correspondence, including monthly statements, sent to the debtor is in the creditor's name.
- The personnel of the billing service do not make any telephone calls to debtors during which the billing service requests payments or sets up payment arrangements. The billing service may contact debtors to clarify questions about payments received, and the billing service could accept calls from debtors.
- The accounts being handled by the billing service are not in default at the time they are referred to the billing service by the creditor. The referring of a returned check would be considered an account that is in default at the time it is referred.
- The billing service does not pursue legal action against the debtors, and the billing service does not forward debtors' accounts to collection agencies or attorneys.



March 24, 2010

Representative Jason Fields
Wisconsin State Capitol
Room 221 North
P.O. Box 8952
Madison, WI 53708

Dear Members of the Assembly Committee on Financial Institutions,

Thank you for allowing me the opportunity to speak in favor of Senate Bill 286. The bill is critical to keeping Wisconsin healthcare billing companies competitive and to retaining jobs in the state.

There are hundreds of healthcare billing companies in Wisconsin, the majority of which have less than 5 employees. Most billing companies are not aware of the current regulation, nor are they aware that they are in violation of the state statute. Many smaller firms can't afford the cost of being regulated as a collection agency and could go out of business as result of enforcement of the statute.

Healthcare billing companies like Dominion Medical Management, Inc. are not subject to regulation as a collection agency in any other state in which we do business. In fact, our own state of Wisconsin has put us at a distinct disadvantage, since the Department of Financial Institutions has indicated that the collection agency requirements only apply to healthcare billing companies that physically provide services within the state. Companies located outside the state are subject to the regulations of their own state, thus creating an incentive to move jobs out of Wisconsin.

It is my desire to continue providing jobs, expanding my business and serving the healthcare community in my home state of Wisconsin, but I may not be able to do so when neighboring states offer a more typical regulatory climate.

It is important to understand that a healthcare billing company is an extension of the physician's office. All of our communications with patients and insurance companies are on behalf of (and in the name of) the practice and not as a collection agency. In addition, our contracts with healthcare providers specifically state that we are not a collection agency. We manage administrative activities for our doctors, allowing them to focus on what matters most--patient care. It is also important to note, that the passage of this bill does not infringe on the patients' rights, in addition to being subject to regulations from the Office of the Inspector General, HIPAA, HITECH and the Center for Medicare & Medicaid services, we are also subject to state regulations under state statute 427. SS 427 applies to any "obligation or alleged obligation arising from a consumer transaction" and clearly identifies prohibited practices in attempting to collect a claim. We fully support state statute 427.

As evidence that we are not a collection agency, I need to note that our clients separately engage collection agencies to collect their aged receivables after our billing has gone out and is left unpaid. The physician's office determines when to send those items to the agency, putting collections firmly outside of our scope of services.

Thank you for your consideration on this legislative matter which impacts hundreds of Wisconsin businesses. We look forward to your support to help us keep valuable jobs in Wisconsin. I would also like to thank Chairman Sullivan for having the hearing and request a committee vote on Senate Bill 286 as soon as possible.

Sincerely,

Robert J. Kebbekus, President



March 23, 2010

Representative Dean Kaufert
Room 15 North
State Capitol
P O Box 8952
Madison, WI 53708

Dear Members of the Senate Committee of Veterans and Military Affairs, Biotechnology and Financial Institutions;

I have received communication recently from several healthcare billing companies in the state that our businesses may be considered collection agencies under state statute 218.04(1)(a). Thank you for allowing me the opportunity to speak in favor of Senate Bill 286. This bill is important because it will help keep Wisconsin healthcare billing companies competitive and also help to retain jobs in the state.

DFI has said that these regulations only apply to Wisconsin domiciled companies. Out-of-state companies providing billing to providers in Wisconsin are not subject to these collection agency rules. Out-of-state companies are subject to their own state statutes which do not require them to be registered as a collection agency. In checking with the HealthCare Billing & Management Association they were not aware of any other state which requires billing companies to register as collection agencies.

There are hundreds of healthcare billing companies in the state of Wisconsin, the majority of which have less than 5 employees. Most billing companies are not aware of the current state regulation and that they are in violation of the state statute. Many of these smaller firms would not be able to afford the time and cost of being regulated as a collection agency.

It is important to understand that a healthcare billing company is an extension of the physician's office. All of our communications with patients and insurance companies are on behalf of and in the name of the physician's practice and not as a collection agency. We handle most all of the same administrative duties a physician business office would handle. All communication from our office to patients or insurance companies is in the name of the practice we are billing for. We do CPT and ICD-9 coding from physician records, file claims to insurance companies, send patient statements, and handle any correspondence from those claims and statements. We often assist the patient in obtaining correct payment from their insurance plan. We take care of managed care contracting and credentialing for providers and numerous other administrative responsibilities that any physician practice handles in their office.

We are asking that you vote yes on Bill 286 and add healthcare billing companies to the exception list of those persons operating as a collection agency. Thank you for your consideration.

Sincerely,

Kathy Algiers
Manager

Schenck Health Services Medical Billing



200 East Washington Street • P.O. Box 1739 • Appleton, WI 54912-1739 • schencksolutions.com
Phone: 920-731-8111 • 800-236-2246 • Fax: 920-739-3071

MEISSNER TIERNEY
FISHER & NICHOLS
S.C.

ATTORNEYS AT LAW
THE MILWAUKEE CENTER
19TH FLOOR
111 EAST KILBOURN AVENUE
MILWAUKEE, WISCONSIN 53202-6622
TELEPHONE (414) 273-1300
FACSIMILE (414) 273-5840

THOMAS J. NICHOLS
ATTORNEY-AT-LAW

EXTENSION 138
TJN@MTFN.COM

March 24, 2010

Representative Jason M. Fields, Chair
Committee on Financial Institutions
Wisconsin State Assembly
Room 221 North, State Capitol
Madison, WI 53708

Dear Representative Fields:

This letter is being submitted in support of 2009 Senate Bill 286. First, let me thank you for making the effort to have this Bill considered in the Wisconsin State Assembly. It is a worthwhile piece of legislation, but I realize that there are many demands upon the Legislature's time at this point in the Session.

As you know, SB 286 clarifies the definition of "collection agency" under Section 218.04 of the Wisconsin Statutes to make it clear that "health care billing companies" are excluded. This is appropriate because health care billing companies are essentially "business-to-business" enterprises. Primarily what they do is gather treatment information from individual physician groups, prepare medical billing invoices in compliance with the applicable Medicare, private payor and other requirements, and submit them (often electronically) to various insurance companies and other payors. Essentially, these companies perform on an outside basis what many physician groups do internally. In fact, receipts collected through health care billing company efforts are often deposited directly into lock box accounts in the name of the relevant physician groups.

Given the substantial differences between true "collection agencies" and health care billing companies, there are a number of requirements in the Regulations promulgated under Section 218.04 covering "collection agencies" (which take over accounts after they become delinquent) that are problematic when applied to health care billing companies (which prepare and send initial invoices to insurance companies and other payors). Among these problematic provisions are the following:

- (1) **Office Hours.** Section 74.02(2) of the Regulations requires "collection agencies" to maintain regular office hours at least three (3) hours per day, Monday through Friday. This requirement is especially problematic for small health care billing companies, where there may be only one or two or just part-time employees and all of the billing is done electronically or by United States mail.

(2) **Release of Accounts.** Section 74.10 of the Regulations provides that a “collection agency” must return any account back to the initial creditor upon request, unless that account is in the “actual process of collection.” Section 74.01(1) of the Regulations defines “actual process of collection” as receiving payments at periodic intervals, contacting the debtor within the last thirty (30) days and receiving a promise of payment, or referring the account for legal actions where the “collection agency” has advanced legal costs. Although this definition apparently could be changed by contract, it obviously contemplates that the “collection agency” engages in the “actual process of collection.” Unlike true “collection agencies,” health care billing companies simply do not engage in these types of “actual process of collection” activities. Whereas it may be appropriate for “collection agencies” to return any accounts that are not in the “actual process of collection” upon request by the creditor, it could be a real hardship for health care billing companies to have to return essentially all of their accounts at any time upon request of the creditor, because the bulk of their work effort is spent preparing the original bill and the accounts are almost never in the “actual process of collection.”

(3) **Full Receipts.** Section 74.11(7) of the Regulations requires a written confirmation that the debt has been paid or settled in full within ten (10) business days of request. This provision contemplates situations where the payment is the last in a series or there is some type of a lump sum payment in full settlement, as is often the case with true “collection agencies.” However, health care billing companies often receive batch payments from insurance carriers or co-payments and deductibles from individuals where full payment cannot be determined for some time. This is because the closing out of any particular bill (much less an entire batch of bills) often involves coordination of payment from primary and secondary payors, as well as individual co-payments and deductibles, in addition to applying Medicare rules and regulations, contractual rate provisions and other applicable requirements.

(4) **Refund Obligation.** Section 74.11(9) of the Regulations requires that all refunds of payments be made within thirty (30) days of the close of the month during which payment was received. Here again, this provision may be entirely appropriate in the case of true “collection agencies” because the amount owed is typically not in question. However, for all of the reasons explained in detail regarding the preceding item, an insurance company’s or patient’s entitlement to a refund may not be able to be determined for some time until after the actual payment is made.

(5) **FDCPA Notice.** Section 74.13 of the Regulations requires a written notification of “collection agency” status within five (5) days after initial communication with the debtor unless the initial communication itself is written and contains the notice (or the debtor has paid the debt within that 5-day period). The required language must be in at least 8.0 type and be contained in either a “collection notice” or in a “validation” under Section 809 of the Federal Fair Debt Collection Practices Act (“FDCPA”).

Compliance with this restriction is easy for true "collection agencies," because their initial communications are often written, and sending subsequent "collection notices" or FDCPA "validations" is common. In stark contrast, the initial communication for health care billing companies is often an electronic submission. Moreover, health care billing companies are not subject to the FDCPA, because their services concern debts which were "not in default" when obtained by the companies. Therefore, they never even send FDCPA "validations" and rarely, if ever, send anything that might constitute a "collection notice" (and certainly would not want to do so within five (5) days of their initial communication).

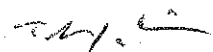
As you can see, the above requirements, while perhaps appropriate for true "collection agencies," would create serious problems for mere health care billing companies. The vast majority of bills transmitted by health care billing companies never even become delinquent, and in the rare cases when they do, the companies typically either write them off or turn them over to actual "collection agencies" for pursuit as a delinquent debt.

Moreover, subjecting Wisconsin health care billing companies to "collection agency" regulation is particularly problematic, because out-of-state health care billing companies are not subject to such regulation, even those who bill for health care services provided to Wisconsin patients. Thus, Wisconsin health care billing companies would be faced with the unhelpful prospect of having to move out of state in order to conduct their business or simply losing business to national competitors who do not have employees within the state and who would not be subject to these onerous requirements. Either way, it is not good for Wisconsin employment, and in any event, there is no benefit to Wisconsin consumers.

As for consumers, it is important to recognize that the vast majority of bills and collections resulting from health care billing company services are between the companies themselves and government programs or other third-party payors. Though there is some communication with individual consumers regarding co-payments and deductibles, this communication typically only occurs after the government payor or private insurance company has determined the gross amount that needs to be paid, as well as the portion of that amount that is to be paid by the patient insured. Thus, the impact of this legislative clarification on individual consumers should be negligible.

In light of the above, we strongly urge you to recommend passage and vote in favor of Senate Bill 286. Thank you very much for your consideration in this matter.

Sincerely,



Thomas J. Nichols



The Healthcare Billing and Management Association (HBMA), is the premier not-for-profit membership association for the third party medical billing industry. The core purpose of HBMA is to provide education, information and advocacy for the industry and its members. It is important to note that HBMA provides educational and informational resources for initial medical claims, only. HBMA has always taken the position that its members should have NO business or financial involvement in "collection agency" businesses. Further, HBMA has always taken the position that its members should NOT have a business relationship with a collection agency, but rather to facilitate providing information to a collection agency, which the medical provider has chosen and has direct contractual relationships with.

HBMA members frequently perform all of the physician's practice management functions, accounts receivable management, medical billing consulting, as well as assistance in the preparation and completion of provider enrollment forms and other practice management services.

HBMA members typically provide services to specialty physician groups and primary care practices and process Medicare, Medicaid, and private health insurance claims. A typical HBMA member processes approximately 20,000 claims per month, totaling \$20 million per year; some do much more.

Should there be a need for further information or clarification of the services provided by HBMA to its members, or our position on any issues of interest to any governmental legislative or regulatory body, please contact me.

Best Regards,

A handwritten signature in cursive script that reads "Bradley J. Lund".

Bradley J Lund, Executive Director
Healthcare Billing & Management Association
1540 S. Coast Highway, Suite 203
Laguna Beach, CA. 92651
877-640-4262 Ex: 203
brad@hbma.org
www.hbma.org



Badger Billing Services, Inc.

262-241-4030
1-800-232-0463
FAX 262-241-5261

March 18, 2010

Representative Jason Fields
Chair
Committee on Financial Institutions
Room 221 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Representative Fields:

I am writing to express my support for SB 286, which is scheduled to be discussed by the Wisconsin Assembly Committee on Financial Institutions on Wednesday, March 24, 2010.

This bill makes a distinction between a medical billing company and a collection agency. SB 286 adds healthcare billing companies to the list of businesses (attorneys, banks, express companies, insurers, and real estate brokers and salespersons) currently exempt from the rules governing collection agencies by the Wisconsin DFI.

I feel that this distinction is important because a medical billing company is not a collection agency:

- The "business" of medicine is complex and changing. Medical groups utilize outside medical billing companies to stay compliant with complicated rules and regulations.
- Physicians and other medical providers face declining reimbursement each year.
- Medical providers struggle to stay current not only with the most recent clinical medical treatments, but as well with complex third party billing requirements.
- Medical billing companies can provide billing expertise to medical providers on a more cost effective basis.
- Medical providers contract with medical billing companies act to provide their billing function and stay current with third party requirements.
- Medical billing companies assist patients by submitting their claims to their insurance companies on their behalf. Medical billing companies also assist patients by helping to assure that appropriate payment was made by their third party payer. After these payments are applied, patients are notified of their remaining balance to the provider with a statement.
- Medical billing firms merely provide an outsourced service to the medical provider that would have been normally performed by the medical provider as part of the routine transaction of delivering medical care to the patient.

- Patients who have an outstanding unpaid balance may be sent to an outside collection agency. The decision to send an account to a collection agency is made by the provider and not the medical billing company.
- Patients/consumers are protected in the State of Wisconsin under the Wisconsin Consumer Act 427, which regulates those businesses, including medical providers, who may be collecting past due debt.

In addition, the Wisconsin DFI has said that these regulations only apply to Wisconsin domiciled companies. Out of state companies doing billing in Wisconsin are not subject to these collection agency rules. Out of state companies are subject to their own state statutes which do not require them to be registered as a collection agency. This distinction is unfair to Wisconsin based businesses who are providing employment within our State.

As you know, SB 286 passed with broad bi-partisan support in the Senate: 5-0 out of the Veterans and Military Affairs, Biotechnology, and Financial Institutions Committee, and 23-9 on the floor.

I urge your support of this important legislation and assume that you will share my views with the committee membership.

Sincerely,

John Naida, M.D. /ja

John Naida, M.D.
President
Badger Billing Services, Inc.